



June 19, 2020

Subject: Police transparency reforms

Dear Oregon lawmakers:

As you take up police reform, we write to remind you of the old adage that sunlight is the best disinfectant. The proposed legislation now being discussed by the Legislature does not address several aspects of state law that serve to keep police misconduct from ever seeing the light of day. We hope that time remains for you to consider doing so.

Our members are passionate about transparency because time after time, Oregon's public records law has equipped Oregonians with information about hidden problems so they can rectify them.

When it comes to police, however, public access to public records is often denied — blocking even grave misconduct from becoming public.

Over the years we've seen an increase in statutory barriers to providing the public with crucial information concerning police misconduct. Some seem like they could be quickly and relatively easily addressed:

### **1) Disciplinary, use of force and internal investigations are kept secret.**

Members of the public are often denied access to important disciplinary records concerning police misconduct. They are similarly denied access to internal affairs investigations and use of force reports.

While in theory these records are subject to disclosure with a public interest balancing test, in practice requests for this information are routinely denied. District attorneys, who rule on public records appeals, typically side with law enforcement agencies over requesters even when there is compelling public interest in disclosure. In addition, because sheriffs are elected officials, under Oregon law requesters can only challenge a denial of sheriff's office records through a lawsuit.

Because of that, the public often only can obtain important records when it can afford a lawyer, as when the ACLU appealed two adverse rulings on use-of-force records to the Oregon Supreme Court.

That court found in 2016 that: "Without mutual trust, the police cannot do their work effectively and the public cannot feel safe ... When it comes to complaints about the use of force and the review of those complaints, the public interest in oversight is particularly strong."

In contrast, to ensure public trust, the Oregon State Bar makes all disciplinary complaints, investigations and other records public. State legislatures in New York and California have already taken action to address this problem.

**Solution:** Make disclosure of these records presumed to be in the public interest.

**Background:** <https://theconversation.com/police-officers-accused-of-brutal-violence-often-have-a-history-of-complaints-by-citizens-139709>

### **Police have taken action to hide officers' criminal backgrounds.**

Public records at times have been used to unearth relevant information about public employees' backgrounds — for instance, a bus driver charged with transporting young or disabled people who has a history of sexual assault convictions, or a teacher who spends a month in jail for domestic violence and other offenses while paid to be in school.

Police, however, took action to make it harder for their own records of off-duty behavior to be scrutinized. In January 2015, reporter Carli Brousseau requested records from the state Department of Public Safety Standards and Training to find out how many officers had committed offenses that led to their firing, but still were allowed to remain police officers. The Oregon Attorney General ordered her request be fulfilled under Oregon's records law. Instead the state Department of Public Safety Standards and Training sued *The Oregonian* to block release of the officers' dates of birth. The reporter was not going to publish these dates, but would have used them to conduct a full criminal background check.

With the records successfully tied up in court, police unions went to the Legislature to get their members' birthdates placed off limits, moving the bill through to passage in just a couple of weeks. Unlike in Minnesota, where reporters were able to probe the backgrounds of all police officers in the entire state, the new law meant Oregon reporters were forced to limit the focus of their public-service investigation to just 40 police officers in the series *Fired, but Fit for Duty*.

**Solution:** Revisiting that police union legislation, and eliminating it, would allow public-service, public-interest access to important information while still protecting privacy.

**Background:** [https://www.oregonlive.com/police-fire/2017/12/police\\_discipline\\_records.html](https://www.oregonlive.com/police-fire/2017/12/police_discipline_records.html)

### **3) State and local governments circumvent Oregonians' public records law by hiding police misconduct behind "attorney-client privilege."**

In 2008 a lengthy complaint to DPSST alleged that then-West Linn police Chief Terry Timeus had tolerated if not encouraged racist and sexually extortive behavior by police officers under his previous command in Lake Oswego. He also helped his friend and roommate get another police job after another police agency had fired the friend — having concluded he had sexually assaulted a dispatcher after visiting her home to drop off a raffle prize.

The resulting investigation of Timeus by West Linn's City Attorney was intentionally hidden behind attorney-client privilege. The public, including city councilors, were denied access to the report of the city's investigation until earlier this year — after Timeus was implicated in the controversial Michael Fesser case involving police misconduct, racist text messages and an unlawful arrest of an African-American man.

Had the city's investigative report been released when allegations were first raised about Timeus, one West Linn councilor said she would have moved to terminate him in 2008. In 2007, lawmakers tackled the problem of attorney client privilege being used to hide public misconduct, but even prosecutors at the time were surprised at how weak the resulting law was. Similar abuse of the privilege to hide police misconduct/mismanagement happens on a regular basis to this day.

**Solution:** District attorneys wrote about the privilege law in a 2007 Oregonian op-ed: "Citizens should be able to petition the courts to overcome that presumption of confidentiality if they can demonstrate a clear and convincing public interest for access to documents."

**Background:** <https://pamplinmedia.com/pt/9-news/452800-369266-west-linn-police-investigators-terry-timeus-report-went-unread>

We at SPJ would welcome the opportunity to work with interested lawmakers on ways to improve transparency, accountability and public trust. Please do not hesitate to contact us at [Spjoregon@gmail.com](mailto:Spjoregon@gmail.com).

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